



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. AMS-FV-12-0035; FV12-987-1 IR]

**Domestic Dates Produced or Packed in Riverside County,
California; Decreased Assessment Rate**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the California Date Administrative Committee (Committee) for the 2012-13 and subsequent crop years from \$1.00 to \$0.90 per hundredweight of dates handled. The Committee locally administers the marketing order which regulates the handling of dates grown or packed in Riverside County, California. Assessments upon date handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year begins October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jeff Smutny, Marketing Specialist, or Kurt J. Kimmel, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Jeffrey.Smutny@ams.usda.gov or Kurt.Kimmel@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing

Order and Agreement Division, Fruit and Vegetable Program,
AMS, USDA, 1400 Independence Avenue SW, STOP 0237,
Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax:
(202) 720-8938, or E-mail: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under
Marketing Agreement and Order No. 987, both as amended (7
CFR part 987), regulating the handling of dates produced or
packed in Riverside County, California, hereinafter referred
to as the "order." The order is effective under the
Agricultural Marketing Agreement Act of 1937, as amended (7
U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this
rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order
12988, Civil Justice Reform. Under the marketing order now
in effect, Riverside County, California date handlers are
subject to assessments. Funds to administer the order are
derived from such assessments. It is intended that the
assessment rate as issued herein will be applicable to all
assessable dates beginning October 1, 2012, and continue
until amended, suspended, or terminated.

The Act provides that administrative proceedings must
be exhausted before parties may file suit in court. Under
section 608c(15)(A) of the Act, any handler subject to an

order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2012-13 and subsequent crop years from \$1.00 to \$0.90 per hundredweight of dates.

The California date marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Riverside County, California dates. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate

is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2010-11 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 12, 2012, and unanimously recommended 2012-13 expenditures of \$260,000 and an assessment rate of \$0.90 per hundredweight of Riverside County, California dates. In comparison, last year's budgeted expenditures were \$265,000. The assessment rate of \$0.90 is \$0.10 lower than the rate currently in effect. The Committee recommended a lower assessment rate because the 2012-13 crop is expected to be larger than the previous year. Income generated through the lower assessment rate combined with cull surplus contributions and funds contributed by the California Date Commission for shared marketing activities, should be sufficient to cover anticipated 2012-13 expenses.

Proceeds from sales of cull dates are deposited into a surplus account for subsequent use by the Committee in

covering the surplus pool share of the Committee's expenses. Handlers may also dispose of cull dates of their own production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the Committee for sale to non-human food product outlets. Pursuant to § 987.72(b), the Committee is authorized to temporarily use funds derived from assessments to defray expenses incurred in disposing of surplus dates. All such expenses are required to be deducted from proceeds obtained by the Committee from the disposal of surplus dates. For the 2012-13 crop year, the Committee estimated that \$3,000 from the surplus account would be needed to temporarily defray expenses incurred in disposing of surplus dates.

The major expenditures recommended by the Committee for the 2012-13 crop year include \$110,000 for generic marketing promotions, \$83,520 for general and administrative expenses, \$43,800 for nutrition marketing programs, \$12,680 for a contingency fund, and \$5,000 for licensing renewal. Budgeted expenses for these items in 2011-12 were \$96,300 for generic marketing promotions, \$90,000 for general and administrative expenses, \$73,600 for nutrition marketing programs, and \$5,100 for marketing contingency.

The assessment rate recommended by the Committee was derived based upon the anticipated size of the 2012-13 crop,

the Committee's estimates of the incoming reserve, other income, and anticipated expenses. Date shipments for the year are estimated at 26,500,000 pounds which should provide \$238,500 in assessment income. Income derived from handler assessments, along with a \$3,000 reimbursement for the cost of disposing of surplus culls, and a \$40,000 contribution from the California Date Commission for shared marketing expenses, should be adequate to cover budgeted expenses.

Section 987.72(d) states that the Committee may maintain a monetary reserve not to exceed the average of one year's expenses incurred during the most recent five preceding crop years, except that an established reserve need not be reduced to conform to any recomputed average. Funds in the reserve are available for the Committee's use during the crop year to cover budgeted expenses as necessary or for other purposes deemed appropriate by USDA. The Committee expects to carry a \$15,000 reserve into the 2012-13 crop year. They expect to add \$21,500 to the reserve during the year, for a desired carryout of approximately \$36,500, which is well below the limit specified in the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended,

or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2012-13 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that

small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 79 producers of dates in the production area and 11 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000.

According to the National Agricultural Statistics Service (NASS), data for the most recently completed crop year (2011) shows that about 3.68 tons, or 7,360 pounds, of dates were produced per acre. The 2011 grower price published by the NASS was \$1,320 per ton, or \$.66 per pound. Thus, the value of date production per acre in 2011 averaged about \$4,858 (7,360 pounds times \$.66 per pound). At that average price, a producer would have to farm over 154 acres to receive an annual income from dates of \$750,000 (\$750,000 divided by \$4,858 per acre equals 154 acres). According to Committee staff, the majority of California date producers farm less than 154 acres. Thus, it can be concluded that

the majority of date producers could be considered small entities. According to data from the Committee staff, the majority of handlers of California dates may also be considered small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2012-13 and subsequent crop years from \$1.00 to \$0.90 per hundredweight of dates handled. The Committee unanimously recommended 2012-13 expenditures of \$260,000 and an assessment rate of \$0.90 per hundredweight of dates, which is \$0.10 lower than the 2011-12 rate, currently in effect. The quantity of assessable dates for the 2012-13 crop year is estimated at 26,500,000 pounds. Thus, the \$0.90 rate should provide \$238,500 in assessment income. Income derived from handler's assessments, along with the \$3,000 contribution from the surplus program, and the \$40,000 contribution for shared marketing expenses should be adequate to meet the 2012-13 crop year expenses.

The major expenditures recommended by the Committee for the 2012-13 crop year include \$110,000 for generic marketing promotions, \$83,520 for general and administrative expenses, \$43,800 for nutrition marketing programs, \$12,680 for a contingency fund, and \$5,000 for licensing renewal. Budgeted expenses for these items in 2011-12 were \$96,300 for generic

marketing promotions, \$90,000 for general and administrative expenses, \$73,600 for nutrition marketing programs, and \$5,100 for marketing contingency.

The Committee recommended a lower assessment rate because the 2012-13 crop is expected to be larger than the previous year. As mentioned earlier, date shipments for the year are estimated at 26,500,000 pounds which should provide \$238,500 in assessment income. Income derived from handler assessments, cull surplus contributions, and funds contributed by the California Date Commission for shared marketing activities, should be sufficient to cover anticipated 2012-13 expenses.

Section 987.72(d) states that the Committee may maintain a monetary reserve not to exceed the average of one year's expenses incurred during the most recent five preceding crop years, except that an established reserve need not be reduced to conform to any recomputed average. Funds in the reserve are available for the Committee's use during the crop year to cover budgeted expenses as necessary or for other purposes deemed appropriate by USDA. The Committee expects to carry a \$15,000 reserve into the 2012-13 crop year. They expect to add \$21,500 to the reserve during the year, for a desired carryout of approximately

\$36,500, which is well below the limit specified in the order.

The Committee reviewed and unanimously recommended 2012-13 crop year expenditures of \$260,000. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Marketing Subcommittee, and Budget Committee. Alternative expenditure levels were discussed by these groups, based upon relative value of various marketing projects to the date industry. The assessment rate of \$0.90 per hundredweight of dates was then derived, based upon the anticipated 2012-13 crop size, and the Committee's estimates of the incoming reserve, other income, and anticipated expenses. Assessing at the \$0.90 per hundredweight of dates will generate approximately \$21,500 less than the anticipated expenses, which the Committee determined to be acceptable, as other sources of income should provide adequate funds to cover expenses.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2012-13 season could range between \$1,180 and \$1,320 per ton of dates. Therefore, the estimated assessment revenue for the 2012-13 crop year as a

percentage of total grower revenue could range between 1.5 and 1.4 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California date industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 12, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Riverside County, California, date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby

found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2012-13 crop year begins on October 1, 2012, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dates handled during such crop year; (2) the action decreases the assessment rate for assessable dates beginning with the 2012-13 crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part

987 is amended as follows:

PART 987 - DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE
COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues
to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 987.339 is revised to read as follows:

§ 987.339 Assessment rate.

On and after October 1, 2012, an assessment rate of
\$0.90 per hundredweight is established for Riverside County,
California dates.

Dated: January 2, 2013

David R. Shipman
Administrator
Agricultural Marketing Service

Billing code 3410-02 P

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